

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**HB 311 - SB 843**

March 11, 2013

**SUMMARY OF BILL:** Requires departments, prior to assessing a civil penalty against a person who is regulated by a department and believed to be out of compliance with any law, rule, or regulation, to issue a citation to such person, either by certified mail or via hand delivery which states: the nature and location of the violation, citing the applicable law, rule, or regulation; the requirements necessary to remedy the violation; the time required to remedy, which must be at least 21 days; and the civil penalty that will be assessed should the person not remedy the violation within the time of abatement. Requires the person in question for violation, to, upon receipt of the citation, post a copy of the citation at or near the location referred to in the citation. If the person remedies the situation, such violation will be assessed no civil penalty. Should such person fail to remedy the violation, the civil penalty as laid out in the citation will be assessed.

Authorizes the person in question of a violation to advise the applicable department of any objections to the citation during the time of abatement. The department, upon receipt of the objection, is required to notify any applicable board or commission and afford an opportunity for hearing to be conducted in accordance with the *Uniform Administrative Procedures Act*. The board, commission, or department holding a hearing shall issue an order affirming, modifying, or vacating the citation. Such order will become final 30 days after its issuance. This act will not prohibit the immediate application of criminal penalties to any person.

**ESTIMATED FISCAL IMPACT:**

**Decrease State Revenue - \$45,300/General Fund**  
**\$5,500/Agriculture Regulatory Fund**  
**\$52,500/Tennessee Regulatory Authority**  
**\$368,700/ABC Fund**  
**Increase State Expenditures – \$2,000/One-Time/ABC Fund**  
**\$58,900/Recurring/ABC Fund**  
**\$10,000/General Fund**

**Decrease Local Revenue – Exceeds \$27,200**  
**Increase Local Expenditures - \$19,100\***

**Other Fiscal Impact – The Department of Health’s Division of Regulatory Boards will experience a decrease in fee revenue from assessed civil penalties resulting in a loss of revenue to the boards of \$261,921; however, any decrease**

**in revenue can be offset by subsequent increases in issuance and renewal fees for boards, agencies, and commissions.**

**According to the Department of Health, this legislation may jeopardize \$1,300,000 in federal funds provided to the Office of Health Care Facilities through a contract with the Centers for Medicare and Medicaid Services to conduct surveys on health facilities.**

**According to the Department of Environment and Conservation (TDEC), certain federal acts require that state law maintain a level of severity, at least equal to federal law. According to TDEC, it anticipates that the following acts and related funding would be jeopardized: *Underground Storage Fund, Federal Clean Water Act, Environmental Protection Fund, Safe Drinking Water Act, Safe Water Programs, Drinking Water Regulation, Clean Water Act Grants, State clean Water Program Regulations, Solid Waste Disposal Act, State Hazardous Waste Programs, Clean Air Act, State Air Programs, State Air Implementation*. Jeopardizing federal funding received from these Acts could result in a loss in federal revenue exceeding \$4,400,000.**

Assumptions:

- The Department of Health estimates that it will experience a loss in fine revenue from civil penalties currently assessed by the tattoo parlor inspection program, the Division of Health Care Facilities, and health-related regulatory boards.
- In FY11-12, there were civil penalties collected from the tattoo parlor registration program of approximately \$6,000.
- With respect to the tattoo parlor registration program, pursuant to Tenn. Code Ann. § 62-38-202(k), a percentage of permit fees, fines, and penalties collected within a contract county shall be conveyed by contract to the respective county health department to assist the county health department in implementing the program in the local jurisdiction. This amount shall be calculated based upon fees collected in the contract county during the state's fiscal year multiplied by 95 percent.
- The Department of Health estimates that 45 percent of this \$6,000 figure, or \$2,700 ( $\$6,000 \times 45\%$ ) would be applicable to contract counties.
- Counties would receive approximately 95% of this amount or \$2,565 ( $\$2,700 \times 95\%$ ). It is estimated such counties would experience a 50 percent decrease in fees collected, resulting in a loss in local revenue exceeding \$1,283 ( $\$2,565 \times 50\%$ ).
- Currently, the state would receive the remaining \$3,300 ( $\$6,000 - \$2,700$ ). It is estimated that the state will experience a 50 percent decrease in fees collected, resulting in a decrease in state revenue exceeding \$1,650.
- According to the Department of Health's Office of Health Care Facilities, this act may jeopardize funds the Department receives through a contract with the federal Centers for Medicare and Medicaid Services (CMS), for conducting surveys on facilities. The state currently receives \$1.3 million in funds from such contract.
- Currently, the Department of Health receives approximately \$20,000 annually from State nursing home civil penalties. These funds are currently used to assist indigent

residents relocate during facility closures and replace residents' fund and property as a result of facility misappropriations, bankruptcies, and natural disasters. Any loss in such funds would require the appropriation and expenditures of state funds to replace lost funding. It is estimated that 50 percent or \$10,000 will no longer be collected from fines collected from civil penalties. This would result in a decrease in state revenue exceeding \$10,000 and require an increase in state expenditures exceeding \$10,000 to replace such funds (\$20,000 x 50%).


- According to the Department of Health's Division of Regulatory Boards, it assessed \$523,843 in civil penalties in FY11-12. It is estimated that there would be a 50 percent decrease in fees collected, resulting in a loss in revenue to the boards exceeding \$261,922 (\$523,843 x 50%). Any loss in revenue by the board can be covered by a subsequent increase in fees charged to members or licensees.
- According to the Health Services and Development Agency, there will be no significant fiscal impact to the Agency.
- According to the Department of Environment and Conservation, this legislation will jeopardize certain federal funds, including, but not limited to: the *Underground Storage Fund*, *Federal Clean Water Act*, *Environmental Protection Fund*, *Safe Drinking Water Act*, *Safe Water Programs*, *Drinking Water Regulation*, *Clean Water Act Grants*, *State clean Water Program Regulations*, *Solid Waste Disposal Act*, *State Hazardous Waste Programs*, *Clean Air Act*, *State Air Programs*, *State Air Implementation*. The Department estimated that the total amount of federal funds which will be jeopardized exceeds \$4.4 million.
- According to the Department of Agriculture, this legislation will increase the number of required follow-up inspections of retail food stores and decrease fee revenue collected from civil penalties assessed against such stores.
- A follow-up inspection costs approximately \$85. In the three contract counties in which the Department of Agriculture performs inspections (Knox, Davidson, and Shelby), it estimates 225 additional inspections for an increase in local expenditures exceeding \$19,125 (225 x \$85). The Department also anticipates a loss in civil penalty fee revenue. According to the most recent and available data, the Department received \$51,750 annually from such fees. It is estimated that the Department will experience a 50 percent decrease in such fee revenue, resulting in a decrease in local revenue exceeding \$25,875 (\$51,750 x 50%).
- The Department of Agriculture estimates that annual civil penalty collections are \$78,300 (\$4,500 weights and measures + \$9,000 fertilizer deficiencies + \$54,000 retail food store repeat violations + \$10,800 Pest Control Act). It is estimated that at least 50 percent of the fee revenue will be collected resulting in a decrease in revenue of \$39,150 (\$78,300 x 50%). Approximately 86 percent is General Fund dollars (\$33,669) and approximately 14 percent is Agriculture Regulatory Fund (\$5,481).
- The Tennessee Regulatory Authority (TRA) averages collections of \$105,000 per year from fines and penalties assessed for civil penalties. It is estimated that TRA will experience a 50 percent decrease in such fee revenue, resulting in a loss in state revenue exceeding \$52,500 (\$105,000 x 50%).
- There will be no significant fiscal impact to the Department of Human Services.
- According to the Alcoholic Beverage Corporation (ABC), it will require re-inspections to ensure whether violations have been remedied.

- According to ABC, it takes 4 hours to complete a re-inspection, when factoring into account drive time and other associated duties. ABC estimates that 10 re-inspections will be conducted weekly.
- One new ABC position will be required to cover the estimated 10 re-inspections necessary per week.
- This position will result in an increase in state expenditures of \$58,519 (salary: \$45,658 + benefits: \$6,862 + insurance: \$5,999). It is estimated that one-time expenditures related to this position for supplies/phone/computer/etc. will not exceed \$2,000.
- The ABC estimates that it will experience a decrease in fine revenue assessed for violations.
- In FY11-12, ABC collected \$737,402 in fine revenue. It is estimated that ABC will experience a 50 percent decrease in such collections, resulting in a decrease in state revenue of \$368,701 (\$737,402 x 50%).

*\*Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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